

STATE OF VERMONT
PUBLIC SERVICE BOARD

Dig Safe Notice No. 617

In Re FairPoint Communications, Alleged Violation of)
May 29, 2009, as reported by FairPoint Communications)

Order entered: 4/7/2011

ORDER RE: NOTICE OF PROBABLE VIOLATION

Background

1. Pursuant to 30 V.S.A. § 7001 et. seq., and Vermont Public Service Board Rule 3.800, the Vermont Department of Public Service ("Department") issued a Notice of Probable Violation of Underground Utility Damage Prevention System ("NOPV") to FairPoint Communications ("Respondent").¹
2. Incident Date: May 29, 2009
3. Incident Location: In front of the Holiday Inn on Route 7, Rutland, VT
4. Name and Address of Company that Reported the Incident to the Department: FairPoint Communications, 266 Main Street - Room 201, Burlington, VT 05401
5. Date Incident Reported to Effected Utility: May 29, 2009
6. Date NOPV issued by Department: August 25, 2009 (#1628)
7. Department's Statement of Evidence Supporting the Alleged Violation: "The Department of Public Service investigated this incident and determined the following details. On 5/20/09 Waters Excavation made a notice of excavation activities to install new water and sewer lines at this site to Dig Safe System Inc. Fairpoint did not accurately locate and mark its underground facilities in the area of the proposed excavation. The excavating resulted in damage to an inaccurately marked Fairpoint distribution cable. This resulted in a loss of service to two commercial customers for 3 hours. Waters Excavation notified Fairpoint of the damaged facility. The Department of Public Service issued 3 Notices of

1. The NOPV was issued to "FairPoint New England-VT"; however, we note that the Company name is Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint Communications").

Probable Violation (NOPV's) to FairPoint New England-VT during the 12 months preceding this incident."

8. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7006
9. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of One Thousand Two Hundred Dollars (\$1,200.00).
10. The NOPV, along with instructions concerning how to respond to the NOPV, was sent to FairPoint Communications on August 24, 2009.² To date, FairPoint Communications has not filed a response to the NOPV.

Conclusion and Order

Public Service Board ("Board") Rule 3.807(C) provides:

Within 30 days of receipt of a Notice of Probable Violation, any person who is the subject of an enforcement proceeding pursuant to that Notice shall make a written response to the Department and to the Board, with a copy to the Company that reported the alleged violation.

Accordingly, we conclude that it is appropriate to make a binding disposition of this matter *by default*, pursuant to 3 V.S.A. Section 809(d).

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

Within thirty days of the date of this Order, Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications, shall pay a civil penalty in the amount of One Thousand Two Hundred Dollars (\$1,200.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont, and sent to the Public Service Board at 112 State Street, Montpelier, VT 05620-2701.

2. Letter of Hans E. Mertens, dated August 24, 2009.

Dated at Montpelier, Vermont, this 7th day of April, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: April 7, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.